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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,925	03/15/2002	David Soumekh	7187-101-US	2746

7590

09/07/2004

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/099,925

Applicant(s)

SOUMEKH, DAVID

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16, 17, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's election of Group I, claims 1-15,18 in the reply filed on July 9,2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Objections

2. Applicant is advised that should claim 1 be found allowable, claim 18 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,13,14,18 are rejected under 35 U.S.C. 102(b) as being anticipated by Burkett (US 5866185).

5. Burkett teaches a stirring rod as recited in claim 13, that comprises water soluble potable matter in granular, crystal, or powder form as recited in claim 14, where in the perforations are small enough to prevent from flowing out, but permits the conveyance of essences into the liquid. Thus Burkett inherently overcomes the effect of surface tension of the liquid by the size and density of the perforations, since conveyance of the essences into the liquid is possible. (Column 1, line 58 to Column 2, line 25, Column 3, lines 16-22).

6. Claims 1,3,8,9,11-14,18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lamb et al. (US 2123054).

7. Lamb et al. teach a ground or pulverized coffee-containing stirring tube-shaped rod with an upper portion comprising a lap-seal and a lower portion comprising a pouch with pleats, which are notoriously well known to provide expansion of a pouch, as recited in claims 8,9,11-14, wherein the lower portion comprises perforations that are sized and have densities to encourage the conveyances of essences and are smaller than the coffee as recited in claims 1,3, and 18 (Page 1: Column 1, lines 1-35, Page 1: Column 2, line 25 to Page 2: Column 1, line 4, Page 2: lines 1-50, and Figures 1 and 2).

8. Claims 1-3, 7-10, 13,14,18 are rejected under 35 U.S.C. 102(b) as being anticipated by Popkes (US 4338338).

9. Popkes teaches granular tea or coffee in a stir-tube made of tri-laminated (i.e. foil with an inside plastic laminate and outside adhesive plastic seal) and having a lap seal,

(e.g. item 51) or may include other seals such as fin seals (note column 8-61 in light of the embodiment of Figures 8-10)(wherein the perforations that are sized and have densities to encourage the conveyances of essences and are smaller than the coffee as recited in claims 1-3,7-10,13,14, and 18 (Column 2, lines 23-35, column 1, line 55 to Column 2, line2, Figures 8-10 , Column 6, line 60 to Column 7, line 56).

10. Claims 1 -7,13,14,18 are rejected under 35 U.S.C. 102(b) as being anticipated by Newman et al. (EP 0158511).

11. Newman et al. teaches a granular/crystalline beverage infusion device that has openings with sizes and densities such that permeation occurs more readily and are smaller than the material held in the device as recited in claims 1,3,14 and 18 , wherein the device comprises a woven polypropylene fiber membrane, as recited in claims 4-6, with an aluminum based handle that is laminated on both sides and positioned between the polypropylene membrane as recited in claims 2 and 7, and the membrane/handle structure is sufficiently rigid for stirring as recited in claim 13, (Page 2, line 1 to Page 3, line 5, Page 4, lines 3-15, Page 4, line 25 to Page 5, line 9, Page 5, lines 19-24, Page 6, lines 5-21, Page 7, lines 3-10, Figure 1).

12. Claims 1,3,14,15,18 are rejected under 35 U.S.C. 102(b) as being anticipated by Barnett (US 2791505).

13. Barnett teaches a sealed infusion device with sizes and densities such that permeation occurs easily and are smaller than the material held in the device as recited

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in claims 1,3, and 18, wherein the infusion material includes granular, crystalline, powdered, or medicinal items as recited in claims 14 and 15 (Column 1, lines 15-34, Column 2, lines 53-65, Column 4, lines 25-36).

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Grow (US 2801736) teaches either perforations or woven material for infusers and Anderson (US 1489806), Conrey (US 3193388), Thompson (US 4806369), Dahl (US 4891232), Lowe et al. (US 4986451), and Milone (US 5809868) all teach stir-rod infusers.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
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